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7 UNITED STATES DISTRICT COURT  
8 DISTRICT OF OREGON

9 **VOLTAGE PICTURES, LLC**, a California  
10 Limited Liability Company, and **DALLAS**  
11 **BUYERS CLUB, LLC**, a Texas Limited  
Liability Company,

12 Plaintiffs,

13 vs.

14 **RYAN BLAKE**,

15 Defendant

Case No.: 3:14-cv-1875-AC

DEFENDANT RYAN BLAKE'S ANSWER,  
AFFIRMATIVE DEFENSES  
AND COUNTERCLAIMS

16  
17 **I. ANSWER**

18 Defendant Ryan Blake answers the allegations of plaintiffs' First Amended Complaint for  
19 Copyright Infringement (hereinafter "Complaint") as follows:

20 1. In response to Paragraph 1, the allegations of this Paragraph consist of statements  
21 of intention and/or legal conclusions for which no answer is required.

22 2. In response to Paragraph 2, the allegations of this Paragraph consist of legal  
23 conclusions for which no answer is required. Ryan Blake denies that any alleged copyright

CASE NO. 3:14-CV-1875-AC

DEFENDANT RYAN BLAKE'S ANSWER, AFFIRMATIVE DEFENSES  
AND COUNTERCLAIMS - 1

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1 infringement for which he is responsible occurred and therefore denies that facts conferring  
2 subject matter jurisdiction under 28 U.S.C. § 1331 or 28 U.S.C. § 1338 exist as regards him

3         3. In response to Paragraph 3, the allegations of this Paragraph consist of statements  
4 of intention and/or legal conclusions for which no answer is required.

5         4. In response to Paragraph 4, because Ryan Blake is unaware of the citizenship of  
6 plaintiffs or their specific business structures, the allegations regarding venue conferred under 28  
7 U.S.C. § 1391(b) are denied. The allegations regarding venue conferred under 28 U.S.C. § 1400  
8 are admitted.

9         5. In response to Paragraphs 5, Ryan Blake is without information sufficient to  
10 ascertain the truth of the allegations of this Paragraph. The allegation of this Paragraphs are  
11 therefore denied.

12         6. In response to Paragraph 6, Ryan Blake is without information sufficient to  
13 ascertain the truth of the allegations of this Paragraph. The allegations of this Paragraph are  
14 therefore denied.

15         7. In response to Paragraph 7, Ryan Blake is without information sufficient to  
16 ascertain the truth of the allegations of this Paragraph. The allegations of this Paragraph are  
17 therefore denied.

18         8. In response to Paragraph 8, Ryan Blake is without information sufficient to  
19 ascertain the truth of the allegations of this Paragraph. The allegations of this Paragraph are  
20 therefore denied.

21         9. In response to Paragraph 9, the allegations of this Paragraph consist of statements  
22 of intention and/or legal conclusions for which no answer is required.

1           10.     In response to Paragraph 10, the allegations of this Paragraph consist of statements  
2 of intention and/or legal conclusions for which no answer is required.

3           11.     In response to Paragraph 11, admitted.

4           12.     In response to Paragraph 12, admitted.

5           13.     In response to Paragraph 13, denied.

6           14.     In response to Paragraph 14, Ryan Blake is without information sufficient to  
7 ascertain the truth of the allegations of this Paragraph. The allegations of this Paragraph are  
8 therefore denied.

9           15.     In response to Paragraph 15, Ryan Blake is without information sufficient to  
10 ascertain the truth of the allegations of this Paragraph. The allegations of this Paragraph are  
11 therefore denied.

12          16.     In response to Paragraph 16, Ryan Blake is without information sufficient to  
13 ascertain the truth of the allegations of this Paragraph. The allegations of this Paragraph are  
14 therefore denied.

15          17.     In response to Paragraph 17, Ryan Blake is without information sufficient to  
16 ascertain the truth of the allegations of this Paragraph. The allegations of this Paragraph are  
17 therefore denied.

18          18.     In response to Paragraph 18, Ryan Blake admits that he subscribed for an internet  
19 service account, and that his Internet Service Provider (ISP) has reported that it had assigned his  
20 account IP address 76.115.109.21 as of the date and time alleged. He is without information  
21 sufficient to ascertain the truth of the remaining allegations of this Paragraph. The remaining  
22 allegations of this Paragraphs are therefore denied.

23          19.     In response to Paragraph 19, Ryan Blake is without information sufficient to

1 ascertain the truth of the allegations of these Paragraphs. The allegations of these Paragraphs are  
2 therefore denied.

3 20. In response to Paragraph 20, admitted.

4 21. In response to Paragraph 21, Ryan Blake denies using BitTorrent to download or  
5 upload *Dallas Buyers Club* at any time. He admits that he has used BitTorrent for other purposes.  
6 He admits having very limited knowledge of copyright laws. He has no specific knowledge about  
7 the copyrights associated with *Dallas Buyers Club*.

8 22. In response to Paragraph 22, Ryan Blake is without information sufficient to  
9 ascertain the truth of the allegations of this Paragraph. The allegations of this Paragraph are  
10 therefore denied.

11 23. In response to Paragraph 23, Ryan Blake is without information sufficient to  
12 ascertain the truth of the allegations of this Paragraph. The allegations of this Paragraph are  
13 therefore denied.

14 24. In response to Paragraph 24, the allegations of this Paragraph consist of statements  
15 of intention and/or legal conclusions for which no answer is required.

16 25. In response to Paragraph 25, which consists of general statements not applicable  
17 to Ryan Blake, admitted.

18 26. In response to Paragraph 26, which consists of general statements not applicable  
19 to Ryan Blake, admitted.

20 27. In response to Paragraph 27, which consists of general statements not applicable  
21 to Ryan Blake, admitted.

22 28. In response to Paragraph 28, which consists of general statements not applicable  
23 to Ryan Blake, admitted.

1           29.     In response to Paragraph 29, which consists of general statements not applicable  
2 to Ryan Blake, admitted.

3           30.     In response to Paragraph 30, which consists of general statements not applicable  
4 to Ryan Blake, admitted.

5           31.     In response to Paragraph 31, which consists of general statements not applicable  
6 to Ryan Blake, admitted.

7           32.     In response to Paragraph 32, which consists of general statements not applicable  
8 to Ryan Blake, admitted.

9           33.     In response to Paragraph 33, which consists of general statements not applicable  
10 to Ryan Blake, admitted.

11          34.     In response to Paragraph 34, which consists of general statements not applicable  
12 to Ryan Blake, admitted.

13          35.     In response to Paragraph 35, which consists of general statements not applicable  
14 to Ryan Blake, admitted.

15          36.     In response to Paragraph 36, which consists of general statements not applicable  
16 to Ryan Blake, admitted.

17          37.     In response to Paragraph 37, Ryan Blake denies receiving any compensation.  
18 Ryan Blake is without information sufficient to ascertain the truth of the remaining allegations of  
19 this Paragraph. The allegations of this Paragraph are therefore denied.

20          38.     In response to Paragraph 38, denied.

21          39.     In response to Paragraph 39, Ryan Blake is without information sufficient to  
22 ascertain the truth of the allegations of this Paragraph. The allegations of this Paragraph are  
23 therefore denied.

1           40.     In response to Paragraph 40, denied.

2           41.     In response to Paragraph 41, Ryan Blake denies the allegations to the extent they  
3 are made with specific reference to him. Ryan Blake is without information sufficient to ascertain  
4 the truth of the remaining allegations of this Paragraph. The allegations of this Paragraph are  
5 therefore denied.

6           42.     In response to Paragraph 42, Ryan Blake denies the allegations to the extent they  
7 are made with specific reference to him. Ryan Blake is without information sufficient to ascertain  
8 the truth of the remaining allegations of this Paragraph. The allegations of this Paragraph are  
9 therefore denied.

10          43.     In response to Paragraph 43, Ryan Blake denies the allegations to the extent they  
11 are made with specific reference to him. Ryan Blake is without information sufficient to ascertain  
12 the truth of the remaining allegations of this Paragraph. The allegations of this Paragraph are  
13 therefore denied.

14          44.     In response to Paragraph 44, Ryan Blake denies the allegations to the extent they  
15 are made with specific reference to him. Ryan Blake is without information sufficient to ascertain  
16 the truth of the remaining allegations of this Paragraph. The allegations of this Paragraph are  
17 therefore denied.

18          45.     In response to Paragraph 45, Ryan Blake denies the allegations to the extent they  
19 are made with specific reference to him. Ryan Blake is without information sufficient to ascertain  
20 the truth of the remaining allegations of this Paragraph. The allegations of this Paragraph are  
21 therefore denied.

22          46.     In response to Paragraph 46, Ryan Blake denies the allegations to the extent they  
23 are made with specific reference to him. Ryan Blake is without information sufficient to ascertain

1 the truth of the remaining allegations of this Paragraph. The allegations of this Paragraph are  
2 therefore denied.

3 47. In response to each of the Paragraphs 47 through 76, Ryan Blake denies the  
4 allegations of these Paragraphs.

## 5 **II. AFFIRMATIVE DEFENSES**

6 Ryan Blake hereby asserts the following affirmative defenses, which are pled in the  
7 alternative to the extent they may otherwise be determined mutually exclusive or inconsistent:

8 1. One or more of plaintiffs' claims fail to state a valid claim upon which relief can  
9 be granted.

10 2. This action is barred by plaintiffs' misuse of copyright.

11 3. This action is barred by the doctrine of unclean hands.

12 4. The damages sought in this action are grossly excessive and disproportionate to  
13 any actual damages claimed by plaintiffs. The claim for imposition of such damages violates the  
14 Due Process Clause of the U.S. Constitution, as interpreted in *BMW v. Gore*, 517 U.S. 559 (1996).

15 5. Plaintiffs have failed to join one or more indispensable parties to this action.

16 6. One or more defendants have been improperly joined to this action in violation of  
17 Fed.R.Civ.Pro. 20 and should be severed and/or dismissed from this action.

18 7. The damages which plaintiffs claim are the result of the conduct of third parties  
19 over which Ryan Blake has no control.

## 20 **III. COUNTERCLAIMS**

21 In support of his counterclaims, Ryan Blake alleges as follows:  
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23

**Factual Background**

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2           1.       For many years, it has been widely understood that an IP address, *per se*, is not a  
3 person or legal entity that is capable of committing copyright or trademark infringement. It has  
4 also been widely understood that the remote detection and identification of an IP address  
5 correlated with suspected infringement is distinct from the identification of a specific person that  
6 has committed such infringement.

7           2.       When an Internet Service Provider (ISP) responds to a typical subpoena request  
8 for the identity of a “user” to whom it has temporarily assigned an IP address at a particular point  
9 in time, the ISP usually provides the name of the person or legal entity that, according to the ISP’s  
10 records, is the listed subscriber for internet service as of the time in question. The ISP typically  
11 provides no information about what specific person, if any, may have been using file-sharing  
12 software in connection with a given IP address at any particular point in time. Therefore,  
13 information provided by an ISP in response to a typical subpoena process such as that employed  
14 by plaintiffs in this action does not identify a specific person that has committed infringement at  
15 any particular point in time.

16           3.       In addition to the fundamental problem with ISP responses to typical subpoena  
17 processes, there are a variety of other widely known reasons why the remote detection and  
18 identification of an IP address correlated with suspected infringement does not accurately identify  
19 a specific person that has committed such infringement. This includes the very real possibility  
20 that the ISP subscriber’s internet network was accessed by third parties that engaged in infringing  
21 acts without the subscriber’s knowledge or permission. The use of an ISP subscriber’s internet  
22 network in a manner that is unauthorized and unknown to the subscriber may be explained by  
23 numerous possibilities including: wireless “poaching,” “cracking” or circumvention of password



1 protections and other network security measures; network address translation; the use of  
2 anonymous proxies; and “man-in-the-middle” attacks.

3 4. In addition to the numerous technical explanations for possible mis-identification  
4 of ISP subscribers as infringers, widely available demographic information has for years indicated  
5 that listed ISP subscribers are relatively unlikely to be responsible for suspected infringement,  
6 even when such suspected infringement is appropriately correlated with the subscriber’s physical  
7 address. In these circumstances, demographic information suggests, minor children who are not  
8 capable of subscribing to ISP services are statistically more likely to have engaged in  
9 infringement, often without the ISP subscriber’s knowledge or permission.

10 5. Plaintiffs, which have allegedly employed an “investigator” in gathering the  
11 information supporting this action, purports in their Complaint to have wide-ranging knowledge  
12 about internet communications protocols and the use of peer-to-peer networks. Therefore,  
13 plaintiffs knew or should have known that they could have wrongfully identified Ryan Blake as  
14 having committed the infringement alleged by plaintiffs.

15 6. Ryan Blake has never viewed plaintiffs’ motion picture, *Dallas Buyers Club*. He  
16 has never knowingly downloaded or uploaded a computer file constituting or containing a copy  
17 of *Dallas Buyers Club*. He has no specific knowledge that anyone else has done this using his  
18 internet account or network. Ryan Blake has testified to his innocence under oath, in discovery  
19 responses, and in countless other communications to plaintiffs’ counsel. Disregarding these  
20 statements, plaintiffs have persisted in their prosecution of this lawsuit against Ryan Blake.

21 7. Despite what plaintiffs knew or reasonably should have known about the  
22 possibility of misidentifying Ryan Blake as an infringer, plaintiffs failed to perform reasonable  
23 and appropriate further investigation before naming Ryan Blake as a defendant in this lawsuit.

8. Plaintiffs' suit against Ryan Blake was filed and prosecuted without a reasonable expectation of success on the merits. Plaintiffs' suit against Ryan Blake was filed as part of a pattern of similar suits filed without regard to the merits of individual claims. Upon information and belief, plaintiffs' suit intends to utilize the burdensome and expensive nature of the litigation process to coerce Ryan Blake to pay plaintiffs money in settlement; to intimidate him and others so that they might act in a manner which serves plaintiffs' financial interests; for purposes of general deterrence; and/or for other improperly-motivated purposes.

9. Plaintiffs' unreasonable acts and omissions have caused Ryan Blake to expend unnecessary legal expenses, and have caused him to suffer anxiety and emotional distress. Plaintiffs' threat of massive damages that could mean financial ruin for Ryan Blake is deeply troubling and upsetting.

### **Count 1**

#### **Declaration of Non-Infringement**

1. Ryan Blake re-alleges paragraphs 1-9 of his counterclaims, above.

2. Plaintiffs have asserted claims for copyright and trademark infringement against Ryan Blake that are false and erroneous. Ryan Blake did not infringe plaintiffs' copyrights or trademarks.

3. Ryan Blake respectfully requests that the court enter an order declaring that he has not infringed Plaintiffs' copyrights or trademarks.

### **Count 2**

#### **Abuse of Legal Process**

1. Ryan Blake re-alleges paragraphs 1-9 of his counterclaims, above.

2. Plaintiffs' filing and continued prosecution of their false and erroneous claims for

1 infringement against Ryan Blake are willful acts not proper in the regular conduct of these  
2 proceedings.

3 3. Plaintiffs' filing and continued prosecution of their false and erroneous claims for  
4 infringement against Ryan Blake are aimed at illegitimate and ulterior purposes. Plaintiffs are  
5 using the burdensome and expensive nature of the discovery and litigation processes to coerce  
6 Ryan Blake to pay plaintiffs money in settlement; to intimidate him and others so that they might  
7 act in a manner which serves plaintiffs' financial interests; for purposes of general deterrence;  
8 and/or for other improperly-motivated purposes.

9 4. As a result of the foregoing conduct, Ryan Blake has suffered damages.

#### 10 **IV. PRAYER FOR RELIEF**

11 WHEREFORE, Ryan Blake prays for:

- 12 a. Dismissal of plaintiffs' claims with prejudice;
- 13 b. An order that plaintiffs shall be afforded no relief from its complaint herein;
- 14 c. A declaration of non-infringement and injunctive relief;
- 15 d. For all direct and consequential damages awardable pursuant to the counterclaims;
- 16 e. Attorneys' fees and costs awardable under 17 U.S.C. § 505 and common law;
- 17 f. For post-judgment interest on the entire judgment until paid in full; and
- 18 g. For such other and further relief as the Court may deem just and equitable.

#### 19 **V. JURY DEMAND**

20 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Ryan Blake hereby demands a  
21 trial by jury.

#### 22 **VI. RESERVATIONS**

23 Defendant Ryan Blake reserves the right to assert third-party claims and additional

1 counterclaims in the event that further investigation and discovery support them.

2 Respectfully submitted this 27<sup>th</sup> day of May, 2015.

3 By: /s/ Benjamin Justus  
4 Benjamin R. Justus (admitted *pro hac vice*)  
5 Lory R. Lybeck, OSB #832761  
6 Attorneys for Defendant Ryan Blake  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 27th day of May, 2015, I electronically filed the foregoing Defendant Ryan Blake's Answer, Affirmative Defenses And Counterclaim with the Clerk of the Court for the United States District Court for the District of Oregon by using the CM/ECF system, which will cause service to be issued upon all parties of record whom are participants in the system.

Respectfully submitted this \_\_27th\_\_ day of May, 2015.

/s/ Margaret K. Sheridan  
Margaret K. Sheridan